MASTER AND SERVANT—INJURY FROM DANGEROUS MACHINERY—PROMISE TO REPAIR—ASSUMPTION OF RISK.—RICE v. EUREKA PAPER CO., 75 N. Y. Sup. 49.—Plaintiff worked on a defective rag-cutter. He knew the danger but was induced to remain at work by defendant's promise to repair. He was injured before the expiration of the specified time. A divided court *held,* plaintiff assumed the risk.

The assumption of risk in employment is contractual in nature. By promising to repair defective machinery does master create a new contract by which he assumes risk? The majority feeling constrained to follow N. Y. decisions decide in the negative. *McCarthy v. Washburn,* 42 App. Div. 252; *Marsh v. Chickering,* 101 N. Y. 396. The minority answer affirmatively in agreement with Cooley on Torts, 559-60, the U. S. Supreme Court, and decisions of other states. *Hough v. Ry. Co.,* 100 U. S. 213; *Ferriss v. Machine Works,* 90 Wis. 541.

NEGLIGENCE—LIABILITY OF LESSOR—MCCABE'S ADMX. v. M. & B. S. R. CO., 66 S. W. 1054 (Ky.).—By authority of the legislature M. & B. S. R. R. had been leased to C. & O. R. R. Owing to negligence of lessee in operating one of its trains over the leased line intestate was killed. In suit brought by administratrix to recover damages lessor and lessee were joined as defendants. It was argued by defendants that lessee was alone responsible. *Held,* that the lessor was liable for the torts of the lessee.

The tort here was not caused by any defect in instruction, but solely by the negligence of lessee. It is not settled whether the lessor is responsible for the torts of the lessee, but the best cases seem to hold as in the main case. *R. R. v. Brown,* 17 Wall. 450; *Balsley v. R. R. Co.,* 119 Ill. 68; *Southern R. R. v. Bouknight,* 70 Fed. Rep. 442; *Nelson v. R. R.,* 26 Vt. 717. Some very carefully considered cases, however, take the opposite view. *St. L. W. & W. R. R. v. Curl,* 28 Kans. 622; *Ditchett v. R. R.,* 67 N. Y. 425; *Langley v. R. R.,* 10 Gray 103.

NEGLIGENCE—RAILROAD CARRYING MAIL.—GERMAN STATE BANK v. MINNEAPOLIS, ETC., RY. CO., 113 Fed. 414.—Plaintiff deposited in the United States mail a registered package, containing $3000 in currency. The package was carried in a mail sack on defendant's train to its station, where through negligence of the company, it was extracted from the mail sack. *Held,* that the railroad company was not liable.

No legislation has ever arisen before on this subject. A railroad company carrying the mails does not assume as to them any of the duties or responsibilities of a common carrier. As to the mail itself the railroad has no duty except what it owes to the government, its employer.

NEGLIGENCE—STREET R. R.—REPAIRS OF STREET—ADMISSIBILITY OF MUNICIPAL RESOLUTION.—WELCH v. SYRACUSE RAPID T. CO., 75 N. Y. 173.—R. R. Law, Section 98 requires street Ry. Co. to keep in permanent repair portion of street two feet outside its tracks, under supervision of city. City Charter, Section 30 authorizes mayor and council to regulate and repair streets. Passenger on defendant's cars was injured by stepping into a hole in pavement made by a paving company working under city authority. *Held,* the resolution of city council empowering company to repave street is admissable to show whether or not defendant was negligent.

Such resolution is competent as bearing on its negligence, even though defendant was not relieved of duty to keep street in repair by reason of action of city. *Snell v. Ry. Co.*, 19 N. Y. Sup. 476. The dissenting judges argue from *Conway v. Rochester*, 51 N. E. 395, that Ry. statute is mandatory and city has no authority to relieve Ry. Co. of its duty but only to supervise. Defendant is also negligent for stopping car opposite the hole. *Wolf v. Ry. Co.*, 74 N. Y. Sup. 336.

NEGLIGENCE—WALLS OF BURNED BUILDING—CARE REQUIRED OF OWNER—DAMAGES.—AINSWORTH V. LAKIN, 62 N. E. 746 (Mass.).—*Held*, where walls of a burned building, which could not be used in rebuilding, were left standing without any precaution being taken to prevent their falling, the owner, after a reasonable time in which to take such steps
jury from the wall, is liable for all damages caused thereby.

Any person who for his own purpose brings on his land and collects and keeps anything likely to do mischief if it escapes, must keep it in at his peril. *Fletcher v. Rylands*, L. R. 3 H. L. 330. This rule has been applied to cesspools, *Ball v. Nye*, 99 Mass. 582; to artificial reservoirs, *Gray v. Harris*, 107 Mass. 492; to accumulation of snow and ice upon a building by reason of the shape of its roof, *Shipley v. Fifty Associates*, 106 Mass. 194; and to an ordinary wall; *Gorham v. Gross*, 125 Mass. 232; *Channtler v. Robinson*, 4 Exch. 163. The only exceptions to the liability which have been judicially recognized are in cases of the plaintiff's own fault, or acts of God, or acts of third persons, which the owner had no reason to anticipate.

RES JUDICATA—EQUITABLE RELIEF—COMMERCIAL UNION ASSUR. CO., LIMITED, V. NEW JERSEY RUBBER CO., 51 Atl. Rep. 451 (N. J.).—Insurance company issued policy with agreement that other concurrent insurance should be procured and so distributed that liability under said policy should be for a proportionate part only of any given item of loss. After occurrence of fire loss, such proportionate part of indemnity was tendered, policy was canceled and unearned premium returned. Insured, having failed to procure the agreed concurrent insurance, brought action at law on policy which was allowed to proceed to judgment, this being that validity of policy had been recognized by cancellation. *Held*, that such adjudication did not make liability on policy *res judicata* so as to prevent court of equity from entertaining bill of relief, for the matter *in pais* had different significance in court of law from that in court of equity. Gummere, C. J., and Fort, Pitney, Adams, and Vredenburg, J. J., dissenting.

This decision draws a distinction between those judgments at law as to matter which has the same significance in courts of law and of equity, and those as to matter having different significance in the two courts. It expresses a broader and more just rule of law than the strict rule admitting no such distinction followed in *Hendrickson v. Hinckley*, 58 U. S. (17 How.) 443; *Breckenridge v. Peter*, Fed. Cas. No. 1,825 (4 Cranch, C. C. 15).

TRADE-NAMES—SUIT AGAINST CORPORATIONS FOR INFRINGEMENT—THE PECK BROS. & CO. V. PECK BROS. ET AL., 113 FED. REP. 291 (C. C. A.).—The fact that a corporation has been chartered by a State under a certain name, which it selected, does not afford it immunity from a suit in a Federal Court